

STATE OF MICHIGAN
COURT OF APPEALS

JAMES DROLETT, GAIL DROLETT, and
DOROTHY H. SPROUT, Personal Representative
for the Estate of JOHN SPROUT, deceased,

UNPUBLISHED
May 10, 2007

Plaintiffs/Counter-Defendants-
Appellants,

v

No. 266607
Washtenaw Circuit Court
LC No. 99-005313-NZ

JOSEPH P. BOLTACH,

Defendant,

and

NORTH LAKE INVESTMENTS, LLC,

Defendant/Counter-Plaintiff/Third-
Party Plaintiff-Appellee.

Before: Markey, P.J., and Sawyer and Bandstra, JJ.

PER CURIAM.

Plaintiffs appeal by right the trial court's order granting defendant North Lake Investment's motion to dismiss. Plaintiffs originally brought this action to set aside a conveyance of property from defendant Joseph Boltach and his wife, Anita Boltach, to North Lake. During the bench trial, defendants moved for dismissal at the close of plaintiffs' proofs, contending plaintiffs failed to present sufficient evidence to justify their claims, and that plaintiffs failed to join a necessary party. The trial court granted defendants' motion because it determined (1) plaintiffs failed to add a necessary party, and (2) after recording the land contract, North Lake was a bona fide purchaser whose interest could not be destroyed by plaintiffs. We affirm.

Plaintiffs argue that the trial court committed error in granting North Lake's motion to dismiss because the trial court applied the wrong statutory scheme and because there were questions of fact precluding the trial court from finding that North Lake was a good faith purchaser. We review de novo the trial court's dismissal of an action in a bench trial, and review for clear error the findings of fact supporting that determination. *Samuel D Begola Services, Inc v Wild Bros*, 210 Mich App 636, 639; 534 NW2d 217 (1995). A finding is clearly erroneous

when, although there is evidence to support it, after reviewing the entire we are left with the definite and firm conviction that a mistake has been committed. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000).

The involuntary dismissal of an action is appropriate where the trial court, when sitting as the finder of fact, is satisfied at the close of the plaintiff's proofs that on the facts and the law the plaintiff has shown no right to relief. MCR 2.504(B)(2). A motion for involuntary dismissal calls upon the court to assess the facts, weigh the evidence, judge the credibility of the witnesses, and select between conflicting inferences. *Marderosian v Stroh Brewery Co*, 123 Mich App 719, 724; 333 NW2d 341 (1983).

Here, the trial court applied the Uniform Fraudulent Transfers Act (UFTA). Although we believe that act was inapplicable, we find that the trial court reached the correct result under either the Uniform Fraudulent Conveyances Act (UFCA), which should have been applied, or the UFTA.¹ Under the definition of "transfer" or "conveyance" under either Act, the relevant transaction was the February 1998 land contract. See MCL 566.36, MCL 566.11. There was no evidence to show that North Lake was aware that defendants had any fraudulent intent when they entered into the land contract such that the transfer should be set aside.

Plaintiff nevertheless argues that the trial court should have found a genuine issue of material fact as to whether the transactions should have been set aside under MCL 566.221. To the extent that the general provisions of the UFCA apply to plaintiffs' claim, the argument fails. MCL 566.225, states:

None of the provisions of this, or the last two [2] preceding chapters, shall be construed in any manner to affect or impair the title of a purchaser for a valuable consideration, unless it shall appear that he had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.

As previously noted, the trial court found on the record that defendant North Lake did not have notice of the alleged fraudulent intent of the grantor at the time of the February 1998 transaction. In addition, if the UFCA applied, MCL 566.19 would have precluded plaintiffs' claims. Former MCL 566.19 provided in relevant part:

(1) Where a conveyance or obligation is fraudulent as to a creditor, such creditor, when his claim has matured, may, as against any person except a purchaser for fair consideration without knowledge of the fraud at the time of the purchase. . . .

Plaintiffs could not proceed against defendant North Lake because, as the trial court determined, North Lake purchased the property at issue for fair value without notice of the alleged fraud.

¹ The UFTA succeeded the UFCA, effective December 30, 1998. See *Estes v Titus*, 273 Mich App 356, 370-371, n 3; ___ NW2d ___ (2006).

Moreover, even were the UFTA applied to plaintiffs' actions to set aside the conveyances, plaintiffs could not set aside the conveyance to North Lake. MCL 566.38 provides:

A transfer or obligation is not voidable under section 4(1)(a) [MCL 566.34(1)(a)] against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

The trial court found that North Lake did not have notice, and there was no evidence that the initial land contract between the Boltachs and North Lake allowed for a sale of the property for less than fair market value.

Because plaintiffs could not prove that the conveyance under the land contract should be set aside, they were not entitled to relief.

Plaintiffs also argue that the trial court erred by determining that plaintiffs were required to join Anita Boltach as a necessary party. However, because this case can be resolved without determination of that issue, we decline to address it.

We affirm.

/s/ Jane E. Markey
/s/ David H. Sawyer
/s/ Richard A. Bandstra